



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Canvas & Leather Bag Company, Inc.
File: B-227100
Date: July 24, 1987

DIGEST

A bidder's failure to acknowledge receipt of a material amendment renders the bid nonresponsive; the fact that the bidder may not have received the amendment until the day after bid opening is irrelevant absent evidence that the failure to receive the amendment resulted from a deliberate attempt by the contracting agency to exclude the firm from competition.

DECISION

Canvas & Leather Bag Company, Inc. protests the rejection of its low bid as nonresponsive under invitation for bids (IFB) No. DLA100-87-B-0085, a total small business set-aside, issued by the Defense Logistics Agency, Defense Personnel Support Center (DPSC), for flyer helmets and bags. DPSC rejected the bid because Canvas failed to acknowledge a material amendment to the IFB.

We deny the protest.

The IFB was issued on December 11, 1986, with a January 14, 1987, bid opening date. On December 29, 1986, DPSC issued amendment No. 0001, which added a pattern date that was essential to the IFB's technical specifications. At bid opening, DPSC received 18 bids in response to the IFB. Canvas' bid was rejected as nonresponsive because it failed to acknowledge the amendment. On April 24, 1987, DPSC made split awards to S and S Garment Mfg. Co. and to Guaynabo Handcraft Corp.

Canvas states that it did not receive the amendment until the day after bid opening, in an envelope postmarked January 7, 1987. Canvas contends that DPSC's mailing date provided insufficient time to permit bidders to respond properly to the amendment. DPSC reports that of the 18 bids received, 13 bidders acknowledged the amendment, 3 of which acknowledged receipt prior to the date on which Canvas

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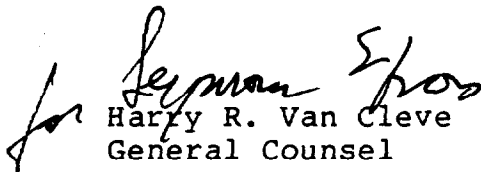
indicates that the envelope containing its copy of the amendment was postmarked.

A bidder's failure to acknowledge a material amendment to an IFB renders a bid nonresponsive because, absent such an acknowledgment, the government's acceptance of the bid would not legally obligate the bidder to meet the government's needs as identified in the amendment. Customer Metal Fabrication, Inc., B-221825, Feb. 24, 1986, 86-1 C.P.D. ¶ 190. A bidder bears the risk of nonreceipt of a solicitation amendment and the contracting agency discharges its legal responsibility when it issues and dispatches an amendment in sufficient time to permit bidders to consider the amendment in preparing their bids, notwithstanding the chance delay in the delivery of the amendment to a particular bidder. Maintenance Pace Setters, Inc., B-212757, Jan. 23, 1984, 84-1 C.P.D. ¶ 98. The fact that the bidder may not have received the amendment until after bid opening is not relevant unless the failure results from a conscious or deliberate effort by contracting officials to exclude the firm from competition. Project Engineering, Inc., B-222005, Feb. 25, 1986, 86-1 C.P.D. ¶ 196.

Canvas does not deny that the amendment was material. Considering the number of bidders that timely acknowledged the amendment, it appears that bidders had sufficient time after receipt to respond to the amendment. Moreover, there is no evidence in the record to suggest, nor does Canvas allege, that there was a deliberate attempt on the part of contracting officials to exclude Canvas from competition. Therefore, we find that Canvas' bid properly was rejected as nonresponsive.

Canvas also argues that acceptance of its lower bid would be in the government's best interest. However, we have consistently held that a nonresponsive bid may not be accepted even though it would result in monetary savings to the government, since acceptance would compromise the integrity of the sealed bidding system. Customer Metal Fabrication, Inc., B-221825, supra.

The protest is denied.


Harry R. Van Cleve
General Counsel